

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CONTEMPT CASE No. 1440 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Contempt Case is instituted complaining that the 1st respondent herein, namely Officiating General Officer Commandant, Station Commander, Headquarters Telangana and Andhra Sub-Area, Bollaram Post, Secunderabad and the 2nd respondent Controller of Defence Accounts are guilty of the contumacious conduct on their part for having deliberately and purposefully violated the directions issued by this Court while deciding Writ Petitions No. 17450, 17451 and 20793 of 2002 on 10.02.2014.

It will be relevant, at this stage, to notice that the present petitioner is the petitioner in Writ Petition No. 20793 of 2002, while one Smt. Indira Chandran, W/o Sri Chandrasekharan was the petitioner in Writ Petition No. 17451 of 2002. A Division Bench of this Court has confirmed the finding arrived at by the Central Administrative Tribunal, Hyderabad Bench as correct to the extent that the applicants before it, which includes the present petitioner, were promoted to the non-existing vacancies and hence, no fault would lie insofar as their reversion is concerned. Simultaneously, this Court has also approved the finding recorded by the Central Administrative Tribunal that since the applicants before it are not at fault in receiving the higher amounts of salary and allowances attached to the post of Sanitary Inspector to which post they were promoted erroneously, the differential amount between the salary and allowances so received by them and those who are attached to the post from which they were promoted, shall not be recovered, as such a promotion secured by them is not the result of any misrepresentation or fraud played by them but due to pure error committed by the department in taking up their case for promotion without there being any vacancies existing. All that the High Court additionally did was by directing the respondents to consider the cases of the applicants before the Tribunal for promotion in case the vacancies in the higher category have become available in the meantime. This clarification is only meant to ensure that the pendency of the Writ Petition instituted by the respondents should

not come in the way of considering the case of the eligible employees for promotion afresh against the vacancies, which have become available in the interregnum period. It is therefore, clear to us that all that this Court did was stoppage of recovery from the salary and allowances of the applicants before the Tribunal, who are either respondents in the Writ Petitions preferred by the department or the petitioners themselves in the Writ Petitions. The respondents now are not guilty of making any such recoveries. On the other hand, the grievance of the petitioner is that in the case of Smt. Indira Chandran, the petitioner in Writ Petition No. 17451 of 2002, she has been permitted to retire and receive all her terminal benefits calculated based upon the salary drawn by her in the promoted category, whereas, when it came to the question of the present petitioner, the terminal benefits have been settled treating her to have been reverted from the promoted category. Therefore, the petitioner herein has been discriminated by the respondents by according her a different treatment than what has been meted out to Smt. Indira Chandran.

Brigadier Ajay Singh Negi, the Commandant Officer of the Headquarters Telangana and Andhra Sub-Area has filed a detailed counter-affidavit in this Contempt Case, pursuant to the notice issued by us on 04.09.2015. It has been clearly brought out by him that Smt. Indira Chandran has sought for voluntary retirement from service and upon granting such permission, she has been permitted to retire from service on the After Noon of 30.09.2003 by which time Writ Petition No. 17451 of 2002 instituted by her was still pending in this Court. As a consequence, the respondents could not have calculated her terminal benefits ignoring the fact that she was already promoted as a Sanitary Inspector as that controversy was engaging the attention and consideration of this Court. The Writ Petition of Smt. Indira Chandran also was decided by this Court only on 10.02.2014. This apart, Smt. Indira Chandran has retired from a different unit though under the same Ministry of Defence and consequently, there was no coordinated exercise. Since the petitioner herein has retired subject to the order passed by this Court in Writ Petition No. 20793 of 2002, the terminal benefits payable to her have been rightly worked out ignoring the pay and allowances drawn by her in the promoted category, as she has no right for such promotion and the order of reversion passed against her was not faulted by the Courts. Brigadier Negi has also clearly brought out that steps are now taken to rectify the error committed in the matter of terminal benefits payable to Smt. Indira Chandran.

The settled principle of law is that if erroneously and unintentionally a mistake has been committed in the case of one person, the Courts cannot compel such error or mistake to be repeated every time in case of others. The more appropriate course in such circumstances would be to order for rectification of the error rather than asking for multiple application of such error. We are therefore, of the firm opinion that no case is made out for us to initiate any proceedings against the respondents under the contempt of Courts jurisdiction. Far from that, the respondents have taken appropriate and correct measures in accordance with the order passed by this Court.

In view of the contents of the counter-affidavit, we need to only observe that the principle of 'no recoveries to be affected so long as the fault is not attributable to the employee concerned' will hold good even in cases of recoveries from salaries/terminal benefits/pension as well.

The Contempt Case is otherwise meritless and it is accordingly, dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

24th November 2015

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